

## **Assembly Bill No. 2856**

### **CHAPTER 437**

An act to add Article 16.1 (commencing with Section 1758.6) to Chapter 5 of Part 2 of Division 1 of the Insurance Code, relating to insurance.

[Approved by Governor September 7, 2002. Filed  
with Secretary of State September 9, 2002.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

**AB 2856, Chavez.** Communications equipment insurance agent license.

Existing law governing insurance provides for the licensure and regulation by the Insurance Commissioner of production agencies, including, among others, insurance agents, life agents, insurance brokers, travel insurance agents, cargo shipper's agents, and variable contract agents. Existing law makes it a crime to act or assume to act in a capacity for which a production agency license is required without having that license.

This bill would provide for the commissioner to issue a communications equipment insurance agent license to a communications equipment vendor, as defined, authorizing the vendor to sell or offer to its customers insurance covering communications equipment. The bill would authorize employees and franchisees of the vendor to be listed as endorsees on the license for the purpose of selling or offering communications equipment insurance under the authority of the agent's license. The bill would impose certain requirements on the licensees and endorsees with respect to training and other related matters. The bill would become operative only upon a determination by the commissioner that the personnel positions needed to carry out its provisions are in existence or have been authorized in the Budget Act of 2002 or a subsequent budget act. The bill would also become operative immediately upon the commissioner receiving a maximum of 50 applications for licensure from communications equipment vendors before April 30, 2003.

By creating a new category of production agency license, the bill would expand the scope of activities for which a license is required. Thus, the bill would expand the scope of an existing crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Article 16.1 (commencing with Section 1758.6) is added to Chapter 5 of Part 2 of Division 1 of the Insurance Code, to read:

Article 16.1. Limited License for Retail Vendors of  
Communications Equipment

1758.6. No communications equipment vendor shall offer or sell any form of communications equipment insurance in this state unless that person is licensed as an insurance agent or broker pursuant to Article 3 (commencing with Section 1631) or has complied with the requirements of this article and has been issued a license by the commissioner as provided in this article.

1758.61. The commissioner may issue to an applicant that has complied with the requirements of this article a communications equipment insurance agent license that authorizes the licensee to offer or sell insurance in connection with, and incidental to, the sale of communications equipment or the sale or provision of service for communications equipment by a retail vendor.

1758.62. (a) An applicant for a communications equipment insurance agent license under this article shall submit all of the following to the commissioner:

(1) A written application for licensure, signed by the applicant or an officer of the applicant, in the form prescribed by the commissioner.

(2) A certificate by the insurer that is to be named in the communications equipment insurance license, stating that the insurer has satisfied itself that the named applicant is trustworthy and competent to act as its insurance agent limited to this purpose and that the insurer will appoint the applicant to act as its agent to transact the kind or kinds of insurance that are permitted by this article, if the communications equipment insurance agent license applied for is issued by the commissioner. The certification shall be subscribed by an officer or managing agent of the insurer on a form prescribed by the commissioner.

(3) An application fee, and for each license period thereafter, a renewal fee, in an amount or amounts determined by the department as sufficient to defray the department's actual cost of processing the application or renewal and implementing this article. The limitation on



fee increases of 10 percent without prior approval of the Legislature set forth in Section 12978 shall not apply to the application or renewal fee set forth in this subdivision during the years 2003, 2004, and 2005.

(b) Notwithstanding any other provision of law to the contrary, the provisions set forth in Sections 1667, 1668, 1668.5, 1669, 1670, 1738, and 1739 apply to any application for or issuance of a license pursuant to this article.

(c) Costs associated with any enforcement action or investigation shall be paid for by the person or organization licensed pursuant to this article.

1758.63. (a) An employee of a communications equipment vendor or franchisee of a communications equipment vendor that has been issued a communications equipment agent license pursuant to this article may be an endorsee authorized to offer insurance products under the authority of the communications equipment insurance agent license if all of the following conditions have been met:

(1) The employee is 18 years of age or older.

(2) The communications equipment vendor, at the time it submits its communications equipment agent's license application pursuant to Section 1758.62, also establishes a list of the names of all endorsees to its communications equipment agent license. The list shall be maintained by the communications equipment vendor in a form prescribed by, or format acceptable to, the commissioner, and shall be updated annually. The list shall be retained by the communications equipment vendor for three years and made available to the commissioner for review and inspection.

(3) The communications equipment vendor submits to the commissioner with its initial communications equipment agent license application and annually thereafter a certification, subscribed by an officer of the company on a form prescribed by the commissioner, stating all of the following:

(A) The number of endorsees offering insurance products under the authority of the communications equipment agent license for the applicable period.

(B) A statement that no person other than an endorsee sells or offers insurance on its behalf.

(C) That all endorsees offering insurance have completed training as required by this article.

(b) Each communications equipment vendor licensed pursuant to this article shall provide for the training of its endorsees under a program developed by a licensed fire and casualty broker or agent prior to allowing its endorsees to offer or sell insurance products. The training shall meet the following minimum standards:



(1) Each communications equipment agent endorsee shall receive instruction about the types of insurance specified in subdivision (d) of Section 1758.69 that are offered for sale to prospective customers.

(2) Each communications equipment agent endorsee shall receive training about ethical sales practices.

(3) Each communications equipment agent endorsee shall receive training about the disclosures to be given to prospective customers pursuant to Section 1758.66.

(c) The training materials used by or on behalf of the communications equipment vendor to train its endorsees shall be submitted to the department by the licensed fire and casualty agent or broker that develops the materials at the time the licensee applies for its communications equipment insurance agent license. Any changes to previously submitted training materials shall be submitted to the department with the changes highlighted at least 30 days prior to their use by the licensee. Training materials and changes to those materials submitted to the department pursuant to this subdivision shall be deemed approved for use by the company unless it is notified by the department to the contrary. Failure by the communications equipment licensee to submit training materials or changes for department review or use of unapproved or disapproved training materials shall constitute grounds for denial of an application for a license, nonrenewal of a license, or suspension of a license, as appropriate.

(d) The retraining of endorsees shall be conducted whenever there is a material change in the insurance products sold that requires modification of the training materials, but in no event less frequently than every two years for each endorsee.

1758.64. (a) The manager at each location of a communications equipment vendor or a franchisee of a communications equipment vendor licensed pursuant to this article, or the direct supervisor of the vendor's endorsees at each location or region shall be an endorsee and shall be responsible for the supervision of each additional endorsee at that location or in that region. Each licensee shall identify the endorsee who is the manager or supervisor at each location or region for the purposes of this article.

(b) An endorsee may act on behalf of and under the supervision of the communications equipment agent in matters relating to transacting insurance under that agent's license. The conduct of an endorsee of a communications equipment agent acting within the scope of employment or agency shall be deemed the conduct of the communications equipment agent for purposes of this article.



1758.65. (a) If a licensee or endorsee violates any provision of this article or any other provision of this code, the commissioner may do any of the following:

(1) After notice and hearing, suspend or revoke the license of the communications equipment insurance agent.

(2) After notice and hearing, impose fines on the communications equipment insurance agent for its conduct or that of its endorsees.

(3) After notice and hearing, impose other penalties that the commissioner deems necessary and convenient to carry out the purpose of this code, including suspending the privilege of transacting communications equipment insurance pursuant to this article at specific business locations where violations have occurred, imposing fines on the communications equipment insurance agent, and suspending or revoking the endorsement of individual endorsees or manager endorsees.

(b) If any person sells insurance in connection with, or incidental to, the sale of communications equipment or the sale or provision of service for communications equipment, or holds himself or herself or an organization out as a communications equipment insurance agent without obtaining the license required by this article, or as being an endorsee when that person is not an endorsee, or as being licensed pursuant to Chapter 5 (commencing with Section 1631) without obtaining that license, the commissioner may issue a cease and desist order pursuant to Section 12921.8.

(c) Notwithstanding any other provision of law to the contrary, the provisions of Section 1748.5 are applicable to both the organization issued a license pursuant to this article and any endorsee to that license.

1758.66. A communications equipment insurance agent shall not sell insurance pursuant to this article by unsolicited telephone calls or otherwise unless, at the time of sale, or reasonably thereafter with respect to a sale or enrollment occurring by telephone, all of the following conditions are satisfied:

(a) The communications equipment insurance agent provides brochures or other written materials to the prospective purchaser that do all of the following:

(1) Summarize the material terms and conditions of coverage offered, including the identity of the insurer.

(2) Describe the process for filing a claim, including a toll-free telephone number to report a claim.

(3) Disclose any additional information on the price, benefits, exclusions, conditions, or other limitations of those policies that the commissioner may, by rule, prescribe.



(4) Provide the name, address, telephone number, and license number of the licensee or the fire and casualty broker-agent appointed by the insurer issuing communications equipment insurance coverage to the licensee, as well as the department's toll-free consumer hotline.

(b) The communications equipment insurance agent or its endorsees makes all of the following disclosures, which shall be acknowledged in writing by the purchaser, or displayed by clear and conspicuous signs that are posted at every location where contracts are executed, such as the counter where the purchaser signs the service agreement, or provided in writing to the purchaser:

(1) That the purchase by the customer of the kinds of insurance prescribed in this article is not required in order to purchase communications equipment or service.

(2) That the insurance policies offered by the communications equipment insurance agent may provide a duplication of coverage already provided by other insurance policies covering the purchaser.

(3) That the endorsee of the communications equipment agent is not qualified or authorized to evaluate the adequacy of the purchaser's existing insurance coverages, unless that person is licensed pursuant to Article 3 (commencing with Section 1631).

(4) That the customer may cancel the insurance at any time. If the customer cancels any unearned premium will be refunded in accordance with applicable law.

(c) The material terms and conditions of coverage are provided to every person who elects to purchase that coverage.

(d) Costs for the insurance are separately itemized in any billing statement for the insurance.

(e) The insurance is provided under an individual policy issued to the purchaser, or under a group or master policy issued to an organization licensed as a communications equipment insurance agent by an insurer authorized to transact the applicable kinds or types of insurance in this state.

1758.661. A licensee shall not be required to treat moneys collected from consumers purchasing insurance pursuant to this article as funds received in a fiduciary capacity if the insurer represented by the licensee has provided in writing that the funds need not be segregated from funds received by the communications equipment vendor on account of the sale of communications equipment and the charges for insurance coverage are itemized and incorporated as part of the customer's bill.

1758.67. Under the authority of the communications equipment insurance agent license, a communications equipment insurance agent shall not do any of the following:



(a) Offer to sell insurance except in conjunction with, and incidental to, the sale of communications equipment or the sale or provision of service for communications equipment.

(b) Advertise, represent, or otherwise portray itself or its employees or endorsees as licensed insurers or fire and casualty broker-agents.

(c) Pay any endorsee any compensation, fee, or commission dependent on the placement of insurance under the agent's license. Nothing in this code shall prohibit the payment of a performance-related incentive. For purposes of this subdivision, a "performance-related incentive" is money or other tangible or intangible items of value paid or given to any endorsee of the licensee which is not based solely on the offering or selling of the insurance products listed in subdivision (d) of Section 1758.69.

1758.68. Any insurer that provides insurance to be sold by an organization licensed as a communications equipment insurance agent shall file a copy of any individual policy issued to a purchaser, or any policy or certificate issued under a group or master policy to an organization licensed as a communications equipment insurance agent, with the commissioner, who shall make that policy available to the public.

1758.69. As used in this article, the following definitions have the following meanings:

(a) "Enrollment" means the process of soliciting or accepting enrollments or applications from a consumer under a communications equipment insurance policy, which includes informing the consumer of the availability of coverage, preparing and delivery of the certificate of insurance or notice of proposed insurance, or otherwise assisting the consumer in making an informed decision whether or not to elect to purchase communications equipment insurance.

(b) "Communications equipment" means handsets, pagers, personal digital assistants, portable computers, cellular telephones, batteries, and other devices or their accessories used to originate or receive communications signals or service; however, the term does not include telecommunications switching equipment, transmission wires, cell site transceiver equipment, or other equipment and systems used by telecommunications companies to provide telecommunications service to consumers.

(c) "Communications equipment insurance agent license" means an agent license issued to an individual or organization for the enrollment and sale of communications equipment insurance.

(d) "Communications equipment insurance" means insurance issued to cover the loss, theft, mechanical failure, or malfunction of or damage to communications equipment.





(e) “Communications equipment vendor” means any person in the business of selling, reselling, soliciting, or leasing communications equipment or communications equipment service to customers.

(f) “Endorsee” means an unlicensed employee of a communications equipment insurance agent who meets the requirements of this article.

(g) (1) “License period” means all of that two-year period beginning as described in subparagraph (A) or (B) of paragraph (2), as applicable, and ending the second succeeding year on the last calendar day of the month in which the initial license was issued.

(2) A license period shall be determined for each person as follows:

(A) Upon initial licensing, the license period shall start on the date the license is issued.

(B) Subsequently, the license period shall start on the first day following the month in which the initial license was issued.

(3) A license shall be renewed on or before the expiration date of the license period.

1758.691. Nothing in this article regulating the sale of communications equipment insurance shall be construed to impair or impede the application of any other law regulating the sale of communications equipment insurance.

1758.692. (a) Not less than 60 days before a permanent license will expire, the commissioner may mail, to the latest address appearing on his or her records, an application to the licensee to renew the license of a communications equipment insurance agent and any endorsees for the appropriate succeeding license term. It is the licensee’s responsibility to renew, whether or not a renewal notice is received.

(b) The commissioner may accept a late renewal without penalty, provided that the licensee’s failure to comply is due to a clerical error or inadvertence.

(c) An application for renewal of a license may be filed on or before the expiration date. An application for renewal of an expired license may be filed after the expiration date and until that same month and date of the next succeeding year.

(d) The commissioner shall impose a penalty fee equal to one-half of the renewal fee for the communications equipment insurance agent license and any endorsees for any renewal that is filed after the expiration date of the license.

1758.693. (a) This article shall become operative only upon a determination by the commissioner that the personnel positions needed to carry out the provisions of this article are in existence or have been authorized in the Budget Act of 2002 or a subsequent budget act.

(b) On and after January 1, 2003, the commissioner may accept applications from communications equipment vendors seeking



licensure pursuant to this article. However, the commissioner shall not act upon the applications. If, prior to April 30, 2003, the commissioner receives 50 applications or less, the commissioner shall be deemed to have sufficient personnel to carry out the provisions of this article and this article shall immediately become operative.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

